

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,)
v.) 15-cr-10323-IT
DANIEL GIBSON and MARK KESNER,)
Defendants.)

**MOTION BY DEFENDANT MARK KESNER TO DISMISS INDICTMENT BASED ON
VINDICTIVE PROSECUTION OR, IN THE ALTERNATIVE,
FOR DISCOVERY AND EVIDENTIARY HEARING**

Defendant Mark Kesner respectfully moves to dismiss the indictment against him based on the government's vindictive prosecution of him in retaliation for his exercise of his Fifth Amendment rights. Alternatively, if the Court concludes that a further showing is required to warrant dismissal, Mr. Kesner respectfully requests that based on evidence to date of the government's vindictive prosecution, Mr. Kesner be allowed discovery on the issue, followed by an evidentiary hearing on this motion.

In support of this motion, Mr. Kesner respectfully submits the accompanying Memorandum and Declaration.

Respectfully submitted,

Mark Kesner,
By his attorneys,
/s/ Joshua L. Solomon
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CERTIFICATE OF SERVICE AND L.R. 7.1 CERTIFICATION

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on December 30, 2015. I further certify that, on behalf of Mr. Kesner, I raised issues addressed herein with the government on multiple occasions, but have received no relief in response. On October 30, 2015, I wrote to the Chief of the Economic Crimes Unit within the United States Attorney's Office for this District, copying the lead prosecutor on this matter, raising concerns that Mr. Kesner was being retaliated against for exercising his Fifth Amendment rights. Among other things, that letter requested a meeting to discuss these issues. I never received any response to my October 30 letter. I have also made two requests for discovery from the government concerning these matters, in letters dated November 11, 2015 and December 10, 2015. The government has refused to produce the requested information, taking the position that Mr. Kesner cannot satisfy even the burden to obtain discovery.

/s/ Joshua L. Solomon